

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.876 OF 1990
WITH
CROSS OBJECTION**

The State of Maharashtra ...Appellant

vs.

Waman Hari Patil ...Respondent

Ms Geeta Mulekar A.G.P. for State
Mr.S.P.Thorat for the Respondent

**CORAM: A.S.OKA, J.
DATE : DECEMBER 3, 2007.**

ORAL JUDGMENT:

1. Heard learned A.G.P. for the Appellant and the learned Advocate for the Respondent.

2. By this Appeal, the State of Maharashtra has taken an exception to the Judgment and Award dated 28th February 1990 passed by the learned Additional District Judge, Raigad at Alibag. The said Judgment and Award has been passed in a reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act). The land subject matter of the reference is survey No.70 admeasuring 600 sq.meters at village Pendhar, Taluka Panvel, District Raigad. The said land was notified by a notification dated 3rd February 1970 under section 4 of the said Act for the public purpose of setting up satellite city of Navi Mumbai. An Award under section 11 of the said Act was made on 6th May 1986. By the said Award, the market value at the rate of Rs.1.50 per sq. meter was offered by the Special Land Acquisition

Officer. In an application under section 18 of the said Act, a claim was made by the Respondent for enhancement of the market value at the rate of Rs.30/- per sq.meter. By the impugned Judgment and Award, the market value at the rate of Rs.15/- per sq.meter has been fixed.

3. The submission of the learned A.G.P. for the Appellant is that the acquired land is situated at a distance of 3360 meters away from Sion Panvel highway. It is submitted that the market value awarded is on the higher side. It is further pointed out that that no deduction has been made on account of development charges by the reference court.

4. There is a cross objection filed by the Respondent claimant claiming the market value at the rate of Rs.30/- per sq meter. In support of the cross objection, the learned Advocate for the Respondent placed reliance on the Judgment of this Court dated 16th March 2000 in case of Abdul Aziz Vs. Special Land Acquisition Officer (FA.No.875 of 1985) and other connected matters). He pointed out that for the similarly situated lands notified on the same date, this court has fixed the market value at the rate of Rs.22/- per sq. meter. He, therefore, submitted that the cross objection deserves to be allowed.

5. I have carefully considered the submissions. Perusal of the Judgment of this court in case of Abdul Aziz (supra) shows

that this court dealt with the Appeals arising out of Awards under section 18 of the said Act in respect of the various lands situated at villages Pendhar, Taloja, Belpada, Kharghar, Karanjade, Kalamboli in Taluka Panvel, District Raigad. The lands subject matter of the Appeals before the Division Bench were also notified by a notification under section 4 of the said Act dated 3rd February 1970. The said lands subject matter of the Appeal before the Division Bench were also acquired for the same public purpose of setting up satellite city of Navi Mumbai. It is not in dispute that the said Judgment of this Court has attained finality in the sense that none of the parties to the Appeal have challenged the said Judgment and Order.

6. In paragraph 6 and 7 of the said judgment, the Division Bench has dealt with the various Appeals relating to the lands at village Pendhar. In case of a land at village Pendhar which was practically abetting Mumbai Pune highway, the Division Bench has awarded market value of Rs.25/- per sq. meter. In the case of the land which was situated at 480 meters away from the Mumbai Pune highway, and at the distance of 120 meters away from Sion Panvel highway, this court has fixed the market value at the rate of Rs.20/- per sq. meter. In case of the lands which were at the distance of 480 meters away from Mumbai Pune highway, but far away from Sion Panvel highway, this court has fixed the market value at the rate of Rs.20/- per sq. meter. The land which is subject matter of

this Appeal as well as the lands which were subject matter of the Appeals before the Division Bench were acquired for the same project under the same notification. Therefore, the decision of the Division Bench is certainly relevant for deciding the market value of the land subject matter of this Appeal.

6. The claimant has examined one Mr.Jivan Kulkarni, a valuer as his witness. The said witness has prepared a valuation report which is filed at Exh.18 before the Reference Court. In the said report, Shri Kulkarni has stated that the land is at the distance of 320 meters from Mumbai Pune highway and 3360 meters from the Sion Panvel highway. Perusal of the evidence of the said witness shows that there is no challenge on this aspect in his cross examination. Thus, considering the distance of the acquired land from Mumbai Pune highway as well from Sion Panvel highway, following the decision of the Division Bench in case of Abdul Aziz (supra), the market value of the acquired land will have to be fixed at Rs.20/- per sq. meter. After fixing the market value the Division Bench has deducted 10% of the market value on account of development charges. Therefore, in this case, deduction will have to be made at the rate of 10%. Thus, the market value will be Rs.18/- per sq.meter.

7. Thus, there is no merit in the Appeal preferred by the Appellant. The cross objection filed by the Respondent will

have to be partly allowed. There is no dispute about the fact that the Respondent claimant will be entitled to all statutory benefits under section 23(1-A), 23(2) and 28 of the said Act.

8. Hence, I pass the following order :

- i) First Appeal No.876 of 1990 is dismissed. The Appellant will pay costs of the Appeal to the Respondent.
- ii) The cross objection filed by the Respondent is partly allowed. The market value of acquired land is fixed at the rate of Rs.18/- per sq.meter. The Respondent is also entitled to all statutory benefits under section 23(1-A), 23(2) and 28 of the Land Acquisition Act,1894. The Respondent will be entitled to proportionate costs of the reference.
- iii) The Reference Court will calculate the amount of compensation payable to the respondent. This exercise shall be completed within a period of four months from the date of receipt of writ of this Judgment by the Reference Court.
- iv) The Appellant will pay proportionate costs of the Cross Objection to the Respondent.
- v) Writ to be sent immediately.

JUDGE